Not Intended for Print Publication

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

EDWARD N. BELL,)
Petitioner,) Case No. 7:04CV00752
v.	OPINION AND ORDER
GERALD K. WASHINGTON,) By: James P. Jones
ACTING WARDEN, SUSSEX I) Chief United States District Judge
STATE PRISON,)
)
Respondent.	

James G. Connell, III, Devine & Connell, P.L.C., Fairfax, Virginia, and Matthew K. Roskoski, Latham & Watkins, L.L.P., Washington, D.C., for Petitioner; Katherine P. Baldwin, Senior Assistant Attorney General of Virginia, Richmond, Virginia, for Respondent.

In this habeas action brought by a Virginia prisoner under sentence of death, the petitioner has moved for leave to file an ex parte motion seeking expert assistance. The motion has been briefed and is ripe for decision.¹

The court will conduct an evidentiary hearing as to one of the petitioner's claims—that he received ineffective assistance of counsel by virtue of the failure of

The state advises that the former respondent, William Page True, is no longer warden of Sussex I State Prison, where the petitioner is confined. Accordingly, Gerald K. Washington, Acting Warden, Sussex I State Prison, is substituted as respondent pursuant to Federal Rule of Civil Procedure 25(d)(1).

his attorneys to present available evidence in mitigation at the sentencing phase of his

trial. See Bell v. True, No. 7:04CV00752, 2006 WL 280847 (W.D. Va. Feb. 7, 2006)

(granting in part and denying in part state's motion to dismiss). The petitioner is

indigent and desires expert and investigative services in preparation for the

evidentiary hearing. See 21 U.S.C.A. §§ 848(q)(4)(B), (q)(9) (West 1999) (providing

that a capital habeas petitioner who is financially unable to obtain adequate

investigative or expert services reasonably necessary for his case may apply to the

court for payment of such fees or expenses). However, "[n]o ex parte proceeding,

communication, or request may be considered pursuant to this section unless a proper

showing is made concerning the need for confidentiality." 21 U.S.C.A. § 848(q)(9).

For the reasons stated by the state in its opposition to this motion, and for the

reasons stated by the court in denying an earlier similar request by the petitioner, see

Bell v. True, 356 F. Supp. 2d 613, 616-17 (W.D. Va. 2005), I find that the petitioner

has not made a sufficient showing to justify an ex parte application.

Accordingly, it is **ORDERED** that Petitioner's Motion for Leave to File

Section 848(q) Motion Ex Parte is DENIED.

ENTER: March 5, 2006

/s/ James P. Jones

Chief United States District Judge

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